

ASSEMBLY BILL

No. 156

Introduced by Assembly Member Murray

January 23, 1997

An act to amend Sections 1785.14, 1785.16, 1785.30, 1785.31, and 1785.33 of the Civil Code, and to add Section 530.5 to the Penal Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

AB 156, as introduced, Murray. Personal information: credit reporting agencies: misappropriation of identity.

(1) The existing Consumer Credit Reporting Agencies Act provides for the regulation of consumer credit reporting agencies that regularly engage in whole or in part in the business of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer credit reports to 3rd parties. Existing law prohibits a consumer credit reporting agency from furnishing a consumer credit report to any person unless it has reasonable grounds to believe that the consumer credit report will be used by this person for expressly provided purposes.

This bill would additionally require a prospective user of the consumer credit report to provide the consumer credit agency with at least 4 distinct items of information regarding the consumer that correctly matches information within a file assembled by the consumer credit reporting agency and to certify, in specified instances, that it requires a photo identification of an applicant for credit.

(2) The act specifies procedures for the consumer credit reporting agency to follow in case a consumer disputes the completeness or accuracy of any item of information contained in his or her file.

This bill would revise these procedures to, among other things, provide that, if a consumer credit reporting agency reinvestigates the information in dispute, it shall require the person who had provided the information in dispute to provide any and all writings, documents, or other evidence upon which the person bases his or her claim that the information is accurate. It would require the consumer credit reporting agency to provide copies of this evidence to the consumer if the agency concludes that the disputed information is accurate and to immediately delete the information if it does not receive the evidence within a specified period.

The bill would provide that a consumer may require a consumer credit reporting agency to insert a permanent statement within his or her file to notify any prospective user of the information that the consumer does not authorize the issuance of credit in his or her name without specified oral authorization from the consumer.

(3) The act prescribes civil remedies for the violation of the act and provides that the prevailing parties in any action commenced to obtain these remedies shall be entitled to recover court costs and reasonable attorney's fees. The act also prescribes a 2 year statute of limitations from the date liability arises under the act.

This bill would provide that the prevailing plaintiff shall be entitled to recover these costs and attorney's fees unless the plaintiff only seeks and obtains injunctive relief to compel compliance with the act. This bill would revise the statute of limitations to 2 years from the date when the plaintiff knew of, or should have known of, the violation of the act.

(4) This bill would also provide that it is a misdemeanor or felony, as determined by the prosecution, for a person to intentionally misappropriate and use another individual's personal identifying information and obtain, or attempt to obtain, credit, goods, or services in the name of the other



person without the consent of that person. By creating a new crime, this bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1785.14 of the Civil Code is
2 amended to read:

3 1785.14. (a) Every consumer credit reporting
4 agency shall maintain reasonable procedures designed to
5 avoid violations of Section 1785.13 and to limit furnishing
6 of consumer credit reports to the purposes listed under
7 Section 1785.11. These procedures shall require that
8 prospective users of the information identify themselves,
9 certify the purposes for which the information is sought
10 and certify that the information will be used for no other
11 purposes. From the effective date of this act the
12 consumer credit reporting agency shall keep a record of
13 the purposes as stated by the user. Every consumer credit
14 reporting agency shall make a reasonable effort to verify
15 the identity of a new prospective user and the uses
16 certified by ~~such~~ the prospective user prior to furnishing
17 ~~such~~ the user a consumer report. No consumer credit
18 reporting agency may furnish a consumer credit report
19 to any person unless ~~it~~ *all of the following requirements*
20 *are met:*

21 (1) *The consumer credit reporting agency has*
22 *reasonable grounds for believing that the consumer*
23 *credit report will be used by* ~~such~~ *the person for purposes*
24 *listed in Section 1785.11.*

25 (2) *The person provides the consumer credit*
26 *reporting agency with at least four distinct items of*
27 *information regarding a consumer that correctly matches*

1 *information within the file maintained by the consumer*
2 *credit reporting agency on a consumer. The items of*
3 *information may include, but are not limited to, complete*
4 *first and last name, birthdate, mother's maiden name,*
5 *driver's license number, place of employment, and*
6 *residence address.*

7 *(3) If the prospective user intends to issue a firm offer*
8 *of credit to an individual on the basis of an application for*
9 *credit submitted in person, the prospective user certifies*
10 *that it requires a photo identification of the applicant at*
11 *the time the application is submitted and that the*
12 *prospective user, or an employee thereof, matches the*
13 *photo identification to the applicant, makes a photocopy*
14 *thereof, and attaches the photocopy to the application.*

15 *(b) Whenever a consumer credit reporting agency*
16 *prepares a consumer credit report, it shall follow*
17 *reasonable procedures to assure maximum possible*
18 *accuracy of the information concerning the individual*
19 *about whom the report relates. These reasonable*
20 *procedures shall include, but not be limited to, storage in*
21 *a permanent, individualized file for each consumer of the*
22 *indicia of identity used by the agency when it furnishes*
23 *a credit report on the consumer.*

24 *(c) No consumer credit reporting agency may*
25 *prohibit any user of any consumer credit report furnished*
26 *by the consumer credit reporting agency from disclosing*
27 *the contents of the consumer credit report to the*
28 *consumer who is the subject of the report if adverse*
29 *action may be taken by the user based in whole or in part*
30 *on the consumer credit report. The act of disclosure to the*
31 *consumer by the user of the contents of a consumer credit*
32 *report shall not be a basis for liability of the consumer*
33 *credit reporting agency or the user under Section 1785.31.*

34 *(d) A consumer credit reporting agency shall provide*
35 *a written notice to any person who regularly and in the*
36 *ordinary course of business supplies information to the*
37 *consumer credit reporting agency concerning any*
38 *consumer or to whom a consumer credit report is*
39 *provided by the consumer credit reporting agency. The*
40 *notice shall specify the person's obligations under this*

1 title. Copies of the appropriate code sections shall satisfy
2 the requirement of this subdivision.

3 SEC. 2. Section 1785.16 of the Civil Code is amended
4 to read:

5 1785.16. (a) If the completeness or accuracy of any
6 item of information contained in his or her file is disputed
7 by a consumer, and the dispute is conveyed directly to the
8 consumer credit reporting agency by the consumer or
9 user on behalf of the consumer, the consumer credit
10 reporting agency shall within a reasonable period of time
11 and without charge reinvestigate and record the current
12 status of the disputed information before the end of the
13 30-business-day period beginning on the date the agency
14 receives notice of the dispute from the consumer or user,
15 unless the consumer credit reporting agency has
16 reasonable grounds to believe and determines that the
17 dispute by the consumer is frivolous or irrelevant,
18 including by reason of a failure of the consumer to
19 provide sufficient information, as requested by the
20 consumer credit reporting agency, to resolve the dispute.
21 Unless the consumer credit reporting agency determines
22 that the dispute is frivolous or irrelevant, before the end
23 of the five-business-day period beginning on the date the
24 consumer credit reporting agency receives notice of
25 dispute under this section, the agency shall notify any
26 person who provided information in dispute at the
27 address and in the manner specified by the person. A
28 consumer credit reporting agency may require that
29 disputes by consumers be in writing.

30 (b) In conducting such a reinvestigation the consumer
31 credit reporting agency shall review and consider all
32 relevant information submitted by the consumer with
33 respect to the disputed item of information. If the
34 consumer credit reporting agency determines that the
35 dispute is frivolous or irrelevant, it shall notify the
36 consumer by mail or, if authorized by the consumer for
37 that purpose, by any other means available to the
38 consumer credit reporting agency, within five business
39 days after that determination is made that it is
40 terminating its reinvestigation of the item of information.

1 In this notification, the consumer credit reporting agency
2 shall state the specific reasons why it has determined that
3 the consumer's dispute is frivolous or irrelevant. *If a*
4 *reinvestigation is made, the consumer credit reporting*
5 *agency shall require the person who had submitted the*
6 *disputed information to provide the consumer credit*
7 *reporting agency with any and all writings, documents, or*
8 *other evidence upon which the person had based his or*
9 *her claim that the information is accurate. If, after having*
10 *received the writings, documents, and other evidence,*
11 *the credit reporting agency concludes that the disputed*
12 *information is accurate, the credit reporting agency shall*
13 *immediately notify the consumer of that conclusion and*
14 *provide the consumer with copies of all the writings,*
15 *documents, and other evidence provided by the person*
16 *who had submitted the disputed information to the credit*
17 *reporting agency. If the person who had submitted the*
18 *disputed information does not provide the writings,*
19 *documents, or other evidence of the accuracy of the*
20 *disputed information within the 30-day reinvestigation*
21 *period specified in subdivision (a), the disputed*
22 *information shall be immediately deleted and may not be*
23 *reinserted. If a reinvestigation is made and, after*
24 *reinvestigation, the disputed item of information is found*
25 *to be missing, inaccurate, or can no longer be verified by*
26 *the evidence submitted, the consumer credit reporting*
27 *agency shall promptly add, correct, or delete that*
28 *information from the consumer's file.*

29 (c) No information may be reinserted in a consumer's
30 file after having been deleted pursuant to this section
31 ~~unless the person who furnishes the information verifies~~
32 ~~that the information is accurate. If any information so~~
33 ~~deleted from a consumer's file is reinserted in the file, the~~
34 consumer credit reporting agency shall promptly ~~notify~~
35 *notifies* the consumer of the reinsertion in writing or, if
36 authorized by the consumer for that purpose, by any
37 other means available to the consumer credit reporting
38 agency. As part of, or in addition to, this notice the
39 consumer credit reporting agency shall, within five
40 business days of reinserting the information, provide the

1 consumer in writing (1) a statement that the disputed
2 information has been reinserted, (2) a notice that the
3 agency will provide to the consumer, within 15 days
4 following a request, the name, address, and telephone
5 number of any furnisher of information contacted or
6 which contacted the consumer credit reporting agency in
7 connection with the reinsertion, (3) the toll-free
8 telephone number of the consumer credit reporting
9 agency that the consumer can use to obtain this name,
10 address, and telephone number, and (4) a notice that the
11 consumer has the right to *a reinvestigation of the*
12 *information reinserted by the consumer credit reporting*
13 *agency and to add a statement to his or her file disputing*
14 *the accuracy or completeness of the information.*

15 (d) A consumer credit reporting agency shall provide
16 notice to the consumer of the results of any
17 reinvestigation under this subdivision, within five days of
18 completion of the reinvestigation. The notice shall
19 include (1) a statement that the reinvestigation is
20 completed, (2) a consumer credit report that is based on
21 the consumer's file as that file is revised as a result of the
22 reinvestigation, (3) a description or indication of any
23 changes made in the consumer credit report as a result of
24 those revisions to the consumer's file, (4) a notice that, if
25 requested by the consumer, a description of the
26 procedure used to determine the accuracy and
27 completeness of the information shall be provided to the
28 consumer by the consumer credit reporting agency,
29 including the name, business address, and telephone
30 number of any furnisher of information contacted in
31 connection with that information, (5) a notice that the
32 consumer has the right to add a statement to the
33 consumer's file disputing the accuracy or completeness of
34 the information, and (6) a notice that the consumer has
35 the right to request that the consumer credit reporting
36 agency furnish notifications under subdivision (h). A
37 consumer credit reporting agency shall provide the
38 notice pursuant to this subdivision respecting the
39 procedure used to determine the accuracy and

1 completeness of information, not later than 15 days after
2 receiving a request from the consumer.

3 (e) The presence of information in the consumer's file
4 that contradicts the contention of the consumer shall not,
5 in and of itself, constitute reasonable grounds for
6 believing the dispute is frivolous or irrelevant.

7 (f) If the consumer credit reporting agency
8 determines that the dispute is frivolous or irrelevant, or
9 if the reinvestigation does not resolve the dispute, or if the
10 information is reinserted into the consumer's file
11 pursuant to subdivision (c), the consumer may file a brief
12 statement setting forth the nature of the dispute. The
13 consumer credit reporting agency may limit these
14 statements to not more than 100 words if it provides the
15 consumer with assistance in writing a clear summary of
16 the dispute.

17 (g) Whenever a statement of dispute is filed, the
18 consumer credit reporting agency shall, in any
19 subsequent consumer credit report containing the
20 information in question, clearly note that the information
21 is disputed by the consumer and shall include in the
22 report either the consumer's statement or a clear and
23 accurate summary thereof.

24 (h) Following the deletion of information from a
25 consumer's file pursuant to this section, or following the
26 filing of a statement of dispute pursuant to subdivision (f),
27 the consumer credit reporting agency shall, at the
28 request of the consumer, furnish notification that the
29 item of information has been deleted or that the item of
30 information is disputed. In the case of disputed
31 information, the notification shall include the statement
32 or summary of the dispute filed pursuant to subdivision
33 (f). This notification shall be furnished to any person,
34 specifically designated by the consumer, who has, within
35 two years prior to the deletion or the filing of the dispute,
36 received a consumer credit report concerning the
37 consumer for employment purposes, or who has, within
38 six months of the deletion or the filing of the dispute,
39 received a consumer credit report concerning the
40 consumer for any other purpose, if these consumer credit



1 reports contained the deleted or disputed information.
2 The consumer credit reporting agency shall clearly and
3 conspicuously disclose to the consumer his or her rights
4 to make a request for this notification. The disclosure shall
5 be made at or prior to the time the information is deleted
6 pursuant to this section or the consumer's statement
7 regarding the disputed information is received pursuant
8 to subdivision (f).

9 (i) A consumer credit reporting agency shall maintain
10 reasonable procedures designed to prevent the
11 reappearance in a consumer's file and in consumer credit
12 reports of information that has been deleted pursuant to
13 this section and not reinserted pursuant to subdivision
14 (c).

15 (j) If the consumer's dispute is resolved by deletion of
16 the disputed information within three business days,
17 beginning with the day the consumer credit reporting
18 agency receives notice of the dispute in accordance with
19 subdivision (a), and provided that verification thereof is
20 provided to the consumer in writing within five business
21 days following the deletion, then the consumer credit
22 reporting agency shall be exempt from requirements for
23 further action under subdivisions (d), (f), and (g).

24 *(k) A consumer may require a consumer credit*
25 *reporting agency to insert a permanent statement within*
26 *his or her file to notify any prospective user that the*
27 *consumer does not authorize the issuance of credit in his*
28 *or her name unless the issuer of the credit obtains oral*
29 *authorization from the consumer at a phone number*
30 *designated by the consumer.*

31 SEC. 3. Section 1785.30 of the Civil Code is amended
32 to read:

33 1785.30. Upon notification of the results of a reporter's
34 reinvestigation pursuant to Section 1785.16, an applicant
35 may make a written demand on any person furnishing
36 information to the reporter to correct any information
37 which the applicant believes to be inaccurate. The person
38 upon whom ~~such~~ *the* written demand is made shall
39 acknowledge the demand within 30 days. The applicant
40 may require the reporter to indicate on any subsequent

1 reports issued during the dispute that the item or items
2 of information are in dispute. If upon investigation the
3 information is found to be inaccurate or incorrect, the
4 applicant may require the reporter to delete or correct
5 ~~such the~~ item or items of information within a reasonable
6 time. If within 90 days the reporter does not receive any
7 information from the person requested to furnish the
8 same or any communication relative to ~~such this~~
9 information from ~~such this~~ person, the ~~applicant may~~
10 ~~require the reporter to~~ *shall* delete ~~such the~~ information
11 from the report.

12 SEC. 4. Section 1785.31 of the Civil Code is amended
13 to read:

14 1785.31. (a) Any consumer who suffers damages as a
15 result of a violation of this title by any person may bring
16 an action in a court of appropriate jurisdiction against that
17 person to recover the following:

18 (1) In the case of a negligent violation, actual damages,
19 including court costs, loss of wages, attorney's fees and,
20 when applicable, pain and suffering.

21 (2) In the case of a willful violation:

22 (A) Actual damages as set forth in paragraph (1)
23 above:

24 (B) Punitive damages of not less than one hundred
25 dollars (\$100) nor more than five thousand dollars
26 (\$5,000) for each violation as the court deems proper;

27 (C) Any other relief which the court deems proper.

28 (3) In the case of liability of a natural person for
29 obtaining a consumer credit report under false pretenses
30 or knowingly without a permissible purpose, an award of
31 actual damages pursuant to paragraph (1) or
32 subparagraph (A) of paragraph (2) shall be in an amount
33 of not less than two thousand five hundred dollars
34 (\$2,500).

35 (b) ~~In addition to any other remedy contained in this~~
36 ~~section, injunctive~~ *Injunctive* relief shall be available to
37 any applicant aggrieved by a violation or a threatened
38 violation of this title.

39 (c) Notwithstanding any other provision of this
40 section, any person who willfully violates any

1 requirement imposed under this title may be liable for
2 punitive damages in the case of a class action, in ~~such an~~
3 amount that the court may allow. In determining the
4 amount of award in any class action, the court shall
5 consider among relevant factors the amount of any actual
6 damages awarded, the frequency of the violations, the
7 resources of the violator and the number of persons
8 adversely affected.

9 (d) The prevailing parties in any action commenced
10 under this section shall be entitled to recover court costs
11 and reasonable attorney's fees, *unless the plaintiff only*
12 *seeks and obtains injunctive relief to compel compliance*
13 *with this title. If the plaintiff only seeks and obtains*
14 *injunctive relief to compel compliance with this title,*
15 *court costs and attorney's fees shall be awarded pursuant*
16 *to Section 1021.5 of the Code of Civil Procedure.*

17 SEC. 5. Section 1785.33 of the Civil Code is amended
18 to read:

19 1785.33. An action to enforce any liability created
20 under this chapter may be brought in any appropriate
21 court of competent jurisdiction within two years from the
22 date ~~on which the liability arises~~ *the plaintiff knew of, or*
23 *should have known of, the violation of this title* except
24 that where a defendant has materially and willfully
25 misrepresented any information required under this
26 chapter to be disclosed to a consumer and the information
27 so misrepresented is material to the establishment of the
28 defendant's liability to the consumer under this chapter,
29 the action may be brought at any time within two years
30 after the discovery by the consumer of the
31 misrepresentation.

32 SEC. 6. Section 530.5 is added to the Penal Code, to
33 read:

34 530.5. Every person who intentionally
35 misappropriates and uses another individual's personal
36 identifying information and obtains, or attempts to
37 obtain, credit, goods, or services in the name of the other
38 person without the consent of that person is guilty of a
39 public offense, and upon conviction therefor, shall be

1 punished by imprisonment in a county jail not to exceed
2 one year, or by imprisonment in the state prison.

3 SEC. 7. No reimbursement is required by this act
4 pursuant to Section 6 of Article XIII B of the California
5 Constitution because the only costs that may be incurred
6 by a local agency or school district will be incurred
7 because this act creates a new crime or infraction,
8 eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section
10 17556 of the Government Code, or changes the definition
11 of a crime within the meaning of Section 6 of Article
12 XIII B of the California Constitution.

13 Notwithstanding Section 17580 of the Government
14 Code, unless otherwise specified, the provisions of this act
15 shall become operative on the same date that the act
16 takes effect pursuant to the California Constitution.

